FEDERAL COMMUNICATIONS COMMISSION

Joseph Stirmer
Administrative Law Judge

FOOTNOTES

[1] The following mutually exclusive applications have been dismissed: Spanish Radio for South Florida, Inc., *Order*, FCC 85M-103, released January 9, 1985; Minority Women in Broadcasting, Inc., *Order*, FCC 85M-1527, released April 10, 1985; Stephen E. Powell, *Order*, FCC 85M-1529, released April 10, 1985; First City Communications, Inc., *Order*, FCC 85M-2788, released July 12, 1985; Florida Southern Broadcasters Limited Partnership, *Order*, FCC 85M-2789, released July 12, 1985.

[2] Laudersea filed one business day late, but the pleading was accepted. (*See Order* (FCC 86M-2273) of the Presiding Judge released July 15, 1986).

[3] *RKO General, Inc.*, *et al.*, FCC 84-541 at paragraph 12.

[4] Adwave's application states as follows: "George F. Gardner the 100 percent stockholder and president of the applicant proposes to devote full time to his duties as president. As such he will be the chief executive officer of the applicant and will direct the operation of the company on a day-to-day basis."

[5] Gardner founded Business Airport of Carlisle, Inc., in 1967.

[6] South Jersey Petition for Leave to Amend and Amendment, filed December 23, 1985, *granted*, *Order*, FCC 86M-329 (released January 24, 1986); South Jersey Petition for Leave to Amend and Amendment, filed February 7, 1986, *granted*, *Order*, FCC 86M-783 (released March 3, 1986).

[7] *See* South Jersey Petition for Leave to Amend and Amendment, filed December 23, 1985 (Addendum to Amendment).

[8] Cozzin Petition for Leave to Amend and Amendment, filed July 23, 1985, *granted*, *Order*, FCC 85M-3365 (released August 29, 1985).

[9] As of July 10, 1985, Cozzin was also an applicant for eight LPTV stations (Cozzin Ex. 2 at 1). In addition, Mr. Zingale's wife and three of his children had pending 22 applications for LPTV stations (Cozzin Ex. 2 at 1-2).

[10] *RKO General, Inc., (WYFR-FM)*, 100 FCC 2D 462, 467 (1985).

[11] Short of an admission, which is rarely if ever available, deceptive intent shall be determined on the basis of the reasonable inferences to be drawn from the facts of record. The Presiding Judge has relied upon the factors previously discussed. In addition, it is clear that the Commission was deceived by Gardner's conduct because the following divestiture condition was included in the *Hearing Designation Order*, a condition with which Gardner had no intention of complying: "Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that the principals of Adwave have divested all stock ownership in Raystay Company, TV Cable of Waynesboro, Inc., and West Shore Broadcasting Company." Notwithstanding this condition, Gardner did not, prior to the hearing, ever inform the Commission that he would not comply with the condition.

[12] As previously noted, the divestiture commitments made by Gardner referred to ownership, not control.

[13] The Commission advised the Court in its brief in *James L. Oyster v. FCC*, No. 84-1562 (D.C. Cir. 1984) that "it is not sufficient for an applicant to simply believe that it will be financially qualified by the time it obtains a construction permit."

[14] Dr. Reardon's argument that she did not know that a "no" answer would jeopardize her application is unworthy of belief. What did Dr. Reardon think -- that the financial questions included in the application were irrelevant and of no significance?

[15] Dr. Reardon's claim of ignorance must be rejected. First, Dr. Reardon could have asked counsel to explain the Commission's financial qualification standards; she could have asked her husband, who had himself only recently filed a broadcast application, about the financial questions on the application. She did neither. Nor did Dr. Reardon even bother to read the instructions to the application form. Her cavalier approach must be condemned. To do otherwise would place a premium on an applicant's recklessness and disregard for truth and accuracy, thereby completely undermining the Commission's financial certification procedure. That the Commission is concerned with false financial certifications can be seen from its recent *Public Notice*, FCC No. 87-97, In the Matter of Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits, released March 19, 1987. As Laudersea itself argued with respect to Mr. Gardner and his false divestiture commitment, Laudersea's "*post hoc* efforts to garb [its] misrepresentations in the cloak of confusion or honest error are unavailing." (*See* paragraph 21 of Laudersea's Reply Findings.)

[16] How any intelligent person, particularly one with advanced degrees, could have viewed the brief, general conversation with Mr. Birkeland as constituting a "firm commitment from a committed source. . ." is beyond comprehension.

[17] Indeed, when Dr. Reardon later requested a bank loan letter from Mr. Birkeland, he refused to issue one.

[18] *See, Cannon Communications Corporation*, 101 FCC 169, 178-179; 58 RR 2d 950, 957-958 (1985); *Ownership Reporting and Disclosure*, FCC 85-252; 58 RR 2d 604, 620 (1985).

[19] This conclusion is not altered by the recent award of a low power television construction permit at Dillsburg, Pennsylvania, to Raystay Company. (*See* "Petition[s] for Leave to Amend" filed by Adwave on August 14, and September 24, 1986.) Such a media interest has no material significance on the diversification criteria.

[20] In *Cannon Communications Corporation*, cited *supra*, the Review Board gave comparative credit for ten years part-time residence in the service area.

[21] The Commission has its policy of awarding enhancement credit for minority and female participation under consideration and review. *See, Notice of Inquiry*, 1 FCC Rcd 1315 (1986).

[22] The Commission has directed that appeal of the Partial Initial Decision relating to the reactivated RKO cases be deferred. *See*, *RKO General, Inc., et al.*, 2 FCC Rcd 1626 (1987). Thus, an appeal from this Partial Initial Decision shall be deferred pending further Order of the Commission.

ATTACHMENT 3

RKO General, Inc. (WAXY-FM), 4 FCC Rcd 4679 (Portion)

Before the
Federal Communications Commission

quency. The following mutually exclusive applicants remain in this proceeding: RKO General, Inc.(RKO); Adwave Company (Adwave); South Jersey Radio, Inc.

5. By *Memorandum Opinion and Order*, FCC 85M-3835, released October 2, 1985, the ALJ specified the following

David Gardner for another of Gardner's children, Jon Gardner. In addition, five of Gardner's children and two

have in my application and after that I couldn't change. *I discussed with him all of the various things that the Commission would be looking at. With his assistance, we looked at all the applicants* and I asked, I am repeating myself, I did ask him what the Commission would be looking at. After he explained the various things, the Commission would be looking at, *I then determined that it would be useful for me to amend the application.*

[Counsel]: Just to explain your answer a bit, are you

* * *

[Counsel]: Prior to filing the Fort Lauderdale application and reviewing the other applications, is it not true that you did not intend to divest yourself of Raystay?

[Gardner]: I may have thought about it, but certainly hadn't made any decision on it.

agreements for myself and my wife. They are avail-

The ALJ obliged by *Memorandum Opinion and Order*,

while she also has not executed a trust document, she did, on June 16, 1985, execute a document saying she would sign the trust for her stock "as the same may be required to divest myself of ownership of equity in Raystay . . . " (Adwave Ex. 3, p. 5).

18. *Discussion:* In making his divestiture commitment, it is clear that Gardner never contemplated actually selling his stock, or depriving himself of the non-voting benefits of ownership, such as the right to receive the income and dividends of the Raystay stock; the right to dispose of the stock by gift or will; the corporate positions of president and treasurer, or his position as one of the three directors of Raystay; and veto power over "any sale or exchange or other disposition of the capital stock of Raystay Company." And, like her husband, Marian Gardner has no intention of giving up her position as secretary or director of Raystay in the event of a grant (Tr. 238); she stated that she "had no desire" to sell her Raystay stock (Tr. 239).

19. Gardner recognized that the amendment he filed with the Commission in 1984 said nothing about control (Tr. 490). Gardner admitted that he had read the HDO and the clear, unambiguous language concerning divestiture, but claimed that he had not "noticed" that the divestiture provision referred to ownership rather than control of stock (Tr. 492-493). He could not remember ever informing the Commission, prior to the July 1985 hearing, that he only intended to divest himself of voting rights (Tr. 512). It "did not occur" to Gardner that serving as an officer or director or Raystay had any relation to control of the stock. Gardner is simply of the view that he has made a binding commitment to remove himself from "control" of Raystay for so long as he or his wife own an interest in the station being sought by Adwave. He does not intend to take any action inconsistent with that commitment, "whether or not [he] were otherwise free to do so under the law." (Adwave Ex. 6 at 2.)

20. In its Exceptions, Adwave claims (Exceptions, at 1; emphasis in original):

> In sum, there is no *substantial* evidence that Mr. Gardner interposed a knowingly invalid divestiture commitment for the purpose of deceiving the Commission. To the extent Mr. Gardner's plans are deemed insufficient, there is no evidence that this reflects other than a good faith misunderstanding in an area where Commission policy has been complex and developing.

Additionally, Adwave, in essence, claims that Gardner thought that his divestiture commitment could be fulfilled by giving up the voting rights in the stock; that the contemplated trust was not a sham; that by surrendering voting control, Gardner would have become, in effect, a passive investor such as a limited partner and thus would have satisfied the Commission under the policies on *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984); *recon. granted in part*, 58 RR 2d 604 (1985); *further recon. granted in part*, 1 FCC Rcd 802 (1986).

21. However, the facts regarding the key "misrepresentation/lack of candor" issue against Adwave are not in dispute. On March 27, 1984, the "B cut-off date" in this proceeding, Adwave filed an amendment wherein George Gardner stated that if Adwave is awarded a construction permit, "George F. Gardner and his wife, [Marian] Gardner, *will divest themselves of all of the stock they own* in Raystay Company." Raystay, a family corporation, owns and operates various cable television systems, and the divestiture commitment was made by Gardner to improve his comparative position in this proceeding. The commitment to divest appeared on its face to be unconditional and unequivocal and was repeated in the direct case exhibits offered by Adwave.

22. Despite the unequivocal nature of the divestiture commitment, it was revealed during the course of this proceeding that neither Gardner nor his wife have any intention of divesting themselves of their stock ownership of Raystay. Indeed, Gardner, at no time, had any intention of divesting himself in any meaningful way of his stock ownership or the benefits derived from such ownership. Rather, what Gardner had in mind was a trust arrangement whereby he would divest himself of voting rights to the stock; and, because of the alleged "tax consequences," Gardner did not intend to sell the stock.

23. Not only did the trust arrangement fail to satisfy his divestiture commitment, it permitted Gardner's retention of almost all indicia of ownership, save the right to vote the stock. Thus, the trust arrangement would enable Gardner to receive income from the stock; the right to will or make a gifts of the stock; and the right to approve the sale of the stock. The proposed trust agreement contained no provision making it irrevocable by Gardner. Finally, Gardner appointed his personal attorney as the proposed trustee and intended to retain the management positions of president, treasurer, and a director of Raystay.

24. It is clear that the relinquishment of voting rights in a family corporation, under the terms and conditions contemplated by Gardner, can hardly satisfy the pledge he made in his "B cut-off" amendment that he and his wife would divest themselves of "all of the stock they own in Raystay Company. While Gardner claimed that he did not fully "understand" the meaning of "divest" and that he believed that all the Commission required was a relinquishment of "control," it is, nevertheless, apparent that the divestiture statements made by Gardner spoke in terms of stock ownership, not control. But, even control of Raystay was not going to be meaningfully surrendered by Gardner who, as noted, would retain the position of president, treasurer and a director.

25. The Commission expects representations made in the comparative hearing process to be advanced in good faith. Such representations must not be put forth as a part of "gamesmanship" or for tactical advantage; they must be seriously advanced and seriously regarded in actual operation. *Tidewater Teleradio, Inc.*, 24 RR 653, 657 (1962). And, such divestiture commitments must be unconditional and unequivocal. *WHW Enterprises, Inc.*, 89 FCC 2d 799, 813 (Rev. Bd. 1982), *review denied*, FCC 83-368, released September 13, 1983, *rev'd on other grounds sub nom. WHW Enterprises, Inc. v. FCC*, 753 F. 2d 1132 (D.C. Cir. 1985); *Northern Sun Corporation*, 100 FCC 2d 889, 891 (Rev. Bd. 1985); *KIST Corp.*, 99 FCC 2d 173, 196 (Rev. Bd. 1984); *Vacationland Broadcasting Co.*, 97 FCC 2d 485, 488 (Rev. Bd. 1984), *recon. denied*, 56 RR 2d 1260 (Rev. Bd. 1984), *review denied*, FCC 85-275 (1985); *High Sierra Broadcasting, Inc.*, 96 FCC 2d 243 (Rev. Bd. 1983).

26. Adwave argues that although its representations made in its divestiture pledge for the purpose of gaining a comparative advantage were ultimately found to be unwarranted, that is no basis for finding an intent to deceive,

citing *Tequesta Television, Inc.*, 2 FCC Rcd 7342 (Rev. Bd. 1987).[3] Adwave argues that Gardner made his divestiture commitment in good faith, that it was not inherently unreasonable, and that merely because its divestiture proposal may have been defective, such defect does not warrant disqualification. Moreover, Adwave suggests that if it had truly intended to deceive the Commission, it could have, in essence, "found a better way to do it." However, contrary to the thrust of Adwave's arguments, the Board has held that representations made in the course of a hearing seeking to obtain a comparative advantage can serve as the basis for disqualification of an applicant or licensee. *Mid - Ohio Communications, Inc.*, 104 FCC 2d 572 (Rev. Bd. 1986). Additionally, contrary to Adwave's argument that the state of Commission precedent on the use of trusts to effectuate divestiture commitments is unclear, in *Webster - Baker Broadcasting Co.*, 88 FCC 2d 944 (Rev. Bd. 1981), the Board held that a divestiture commitment could not be premised upon a voting trust that had not been created as of the date for filing amendments as a matter of right, and that such a "vague" proposal was "not the same as divestiture of ownership."

27. Here, it must be concluded that Gardner misrepresented facts or, at a minimum, was lacking in candor when he prepared and submitted his divestiture amendment and hearing exhibits because he had, in actuality, no intention of meaningfully divesting himself of his stock ownership in Raystay. It is patent that this pledge by Gardner was not made in good faith, but for the specific purpose of gaining a comparative advantage in this proceeding. Thus, whether Adwave's conduct is considered a misrepresentation or a lack of candor, the result is the same. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127 (1983). Gardner has simply evidenced a willingness to deceive the Commission by his false divestiture commitment. *Bellingham Television Associates, Ltd.*, 59 RR 2d 978 (1986). Indeed, Adwave's lack of candor before the Commission, especially in a hearing proceeding, is indicative of its future behavior. It is well-settled that in order to discharge its duties effectively, "the Commission must, of necessity, rely upon the statements and submissions of its licensees . . . . The fundamental importance of truthfulness and complete candor on the part of applicants, as well as licensees, in their dealings with the Commission is well established." *Lebanon Valley Radio, Inc.*, 35 FCC 2d 243, 258 (Rev. Bd. 1972), *review denied,* 39 FCC 2d 1099 (1973), *rev'd on other* grounds *sub nom. Lebanon Valley Radio, Inc. v. FCC,* 503 F.2d 196 (D.C. Cir. 1974). *See also* FCC v. WOKO, Inc., 329 U.S. 223, 227 (1946). Since the Commission must license thousands of radio and television stations in the public interest, it must therefore rely substantially on the completeness and accuracy of the submissions made to it. *WHW Enterprises, Inc. v. FCC, supra,* 753 F.2d at 1139; *RKO General, Inc. v. FCC,* 670 F.2d 215, 232 (D.C. Cir. 1981), *cert. denied,* 456 U.S. 927 (1982).

28. In its *Policy Regarding Character Qualifications in*

> We believe it appropriate to give misrepesentation specific consideration in the context of this *Policy Statement*. The act of willful misrepresentation not only violates the Commission's Rules; it also raises immediate concerns over the licensee's ability to be truthful in any future dealings with the Commission.
>
> * * *
>
> As we have stated, the trait of 'truthfulness' is one of the two key elements of character necessary to operate a broadcast station in the public interest. The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying.
>
> * * *
>
> We believe it necessary and appropriate to continue to view misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust. The integrity of the Commission's processes cannot be maintained without honest dealing with the Commission by licensees.

29. It is clear from the *Character Policy Statement* that honesty and forthrightness remain of paramount concern to the Commission. Here, Gardner sought to enhance his comparative position by putting forth a pledge to divest his ownership of Raystay, when in fact he had no such intention. His contemplated trust arrangement was a totally ineffective and disingenuous method of attempting to convince the Commission he would be divesting his ownership or his control. As an experienced businessman and broadcaster, Gardner cannot avoid the consequences of his wrongful conduct on the excuse that he did not know what divestiture meant. Thus, like the ALJ, we are unpersuaded by Adwave's defenses. First, while Gardner argues a lack of deceptive intent on his part, the facts nevertheless establish that he had a clear motive for deception when he submitted a divestiture pledge which he had no intention of fulfilling. Deceptive intent must be inferred from Gardner's deceptive conduct. Moreover, we adopt the ALJ's determination that it is impossible to accept Gardner's explanation that he thought he could satisfy his divestiture commitment by surrendering voting control to an appointed trustee of a trust. The arrangement which Gardner envisioned, as previously noted, would not have divested him of either ownership or control of Raystay. As discussed in greater detail at para. 46, *infra*, credibility findings of an ALJ will be given decisional deference, unless such determinations are in irreconcilable conflict with the record evidence. *WHW Enterprises v. FCC, supra*, 753 F. 2d at 1141. Finally, even

30. In sum, we agree with the ALJ that Adwave must be disqualified with respect to the lack of candor/misrepresentation issue specified against it. The preponderance of the record evidence, as a whole, establishes that Adwave does not possess the qualifications to be a Commission licensee. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91 (1981).

LAUDERSEA

31. Rosemarie A. Reardon is the principal of Laudersea. In 1978, she receive her doctoral degree from the University of South Dakota after an internship at Royal C. Johnson Veteran's Administration Medical Center in Sioux Falls, where she conducted individual psychotherapy, marital counseling and vocational testing, and worked with psychiatric, chemically dependent, and medical patients. Since 1978, Dr. Reardon has been in private practice as a counseling psychologist.

32. Dr. Reardon's husband, B. Scott Reardon, III, owns 100% of Sedgwick Broadcasting Company (SBC), the permittee of a new FM broadcast station for Haysville, Kansas. At the time of the hearing, the proposed station was not yet on the air (Laudersea Ex. 3). According to Dr. Reardon, she has no interest in SBC or the proposed Haysville station and does not intend to have such an interest in the future (*Id.*). Furthermore, according to Dr. Reardon, Mr. Reardon will have no ownership interest in the proposed Fort Lauderdale station, nor will he be an employee of Laudersea. Mr. Reardon proposed to be integrated into the management of the Haysville station, for which he applied in 1982; before he made that proposal, Dr. Reardon told him that she would move to Haysville if his application were granted. Thereafter, Dr. Reardon filed her Fort Lauderdale application. At the time she filed the application (or prior thereto), Dr. and Mr. Reardon had discussed the fact that she would move to Fort Lauderdale if her application were granted, whether that move was from Sioux Falls or Haysville, Kansas (Tr. 301). Dr. Reardon was prepared to leave her Sioux Falls practice, which she characterized as successful, in order to go to Haysville and do something "different" (Tr. 347-349).

33. Dr. Reardon has never worked at a radio station and has no prior broadcasting experience of any kind (Tr. 297). Before applying for WAXY, Dr. Reardon took no steps to learn about WAXY's facilities, dial position or format, and she does not even know what frequency the station will broadcast on. Since she filed her application, she has done nothing more to become informed about broadcasting other than "reading some articles in her husband's broadcasting journals at home" and consulting with her attorney. She got "some idea" of WAXY's audience from a periodical, but "that's about it." (Tr. 293). She believes that the Fort Lauderdale station is "lucrative," and this is a reason she filed her application (Tr. 295-296). Dr. Reardon owns no residence in Fort Lauderdale. She does not belong to any Fort Lauderdale organizations (Tr. 317). She has never been to Fort Lauderdale, and did not consider going there before she applied and she does not know the population of Fort Lauderdale or in which county it is located. Since she filed her application in May 1983, Dr. Reardon has done nothing more to learn about the Fort Lauderdale area other than talking to people who have vacationed there and completing her EEO statement by making a telephone call to the Chamber of Commerce shortly before that statement was filed in January 1985 (Tr. 354-355). She has not subscribed to any local newspaper or had any other contact with the Chamber of Commerce (Tr. 358).

34. Dr. Reardon apparently learned of the opportunity to apply for WAXY through Thomas L. Seibert, Mr. Reardon's communications attorney and a friend. At a Georgetown University reunion in the summer of 1980 attended by Mr. and Dr. Reardon and Siebert, they discussed radio as a business opportunity. Late in 1981 and early in 1982, during social gatherings, Siebert and the Reardons discussed the subject of the availability of the RKO stations for the first time (Tr. 580-581, 593-594, 597, 663, 737-740, 756, 758-759; Laudersea Ex. 7 at 1). Dr. Reardon could not remember telling Siebert at that time that she wanted to apply for WAXY. Neither could Siebert recall any discussion of the Fort Lauderdale station with Dr. Reardon during 1980 or 1981. However, according to Reardon, Siebert described a broadcast license in a Sunbelt area as a "premium business opportunity."

35. Siebert claimed that he had an "academic awareness" (Tr. 720) of the costs of constructing and operating a new station, and he believes that it is "more likely than not" that he discussed radio financing and the Commission's financial standards "generally" with Dr. Reardon, but could not specifically recall mentioning any cost figures or even having any specific discussion of financing and costs with Dr. Reardon (Tr. 740-747). Siebert believes he discussed licensing criteria, cost parameters, and the value of a permit with Dr. Reardon because this is what he would normally discuss with prospective clients. Siebert testified that "I do have a specific recollection of having a generalized discussion" about costs (Tr. 723), and when asked about discussing Commission financial requirements with Dr. Reardon, Siebert stated (Tr. 722):

> It is more likely than not, that in discussing that kind of opportunity, that I would have told her that a financial showing of so many hundreds of thousands of dollars has to be qualified to obtain a permit.

Siebert further testified (Tr. 729-730):

> [Counsel]: Was it your practice at that time to advise applicants that she should have a bank loan to support their financial qualifications?
>
> * * *
>
> [Siebert]: It would have been my standard practice to advise a client that the client must make the financial showing through some kind of recognized lending institution like a bank, an insurance company, or provide a personal financial statement.

However, Siebert qualified his answer by noting that Dr. Reardon was not actually a "client" (Tr. 730).

36. In 1982, David S. Birkeland, President of First Bank of South Dakota, met with Mr. and Dr. Readon at a restaurant (Tr. 561; Adwave Ex. 4 at 1-2). The ALJ found

> [W]hat the record shows is that the first two, Mary Jo and Tom were done in precisely the handwriting style – the signature style of Mr.Zingale. That the other two, Roseanne and Nancy, were done in the handwriting, not the signature style of Mr. Zingale; therefore, it is incorrect for the judge to conclude that he tried to make it different from his own writing style. He wrote them exactly in his own writing style, *but two different.*

The record evidence, and the testimony of James T. Miller, which Cozzin only attempts to rebut by the self-serving testimony of Joseph Zingale, is more than adequate to support the adverse conclusions reached by the ALJ.

73. Thus, we hold that the record evidence, taken as a whole, must lead to the ineluctable conclusion that Joseph Zingale (1) misrepresented facts to the Commission when he executed the signatures of his wife and children on 46 LPTV applications, (2) that he did so with intent to deceive the Commission, and "stack" the Commission's LPTV lottery process in his favor; and (3) he was the "real-party-in-interest" in the 46 LPTV applications filed in his family member's names. Such actions cannot be condoned, and Cozzin (whose sole officer, director, and 49% shareholder is Joseph Zingale) must be found to be disqualified. *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946) and citations at paras. 27-28, *supra.*

SOUTH JERSEY

74. South Jersey has been determined to be fully qualified to construct and operate as proposed. No qualifying issues were specified against South Jersey, and no party during the course of this proceeding sought to enlarge issues against South Jersey. While South Jersey, and its principals, are multiple licensees and propose no integration of ownership and management, it is the only qualified applicant remaining; thus, the comparative aspects of South Jersey's application (or the disqualified applicants) need not be addressed.

CONCLUSIONS

75. ACCORDINGLY, IT IS ORDERED, The unopposed Motion for Leave to Amend, filed November 16, 1987 by South Jersey Radio, Inc., IS GRANTED, and the proposed amendment IS ACCEPTED; and,

76. IT IS FURTHER ORDERED, That the applications of Adwave Company (File No. BPH-830510AL); Cozzin Communications Corporation (File No. BPH-830512AW); and Rosemarie A. Reardon d/b/a Laudersea Broadcasting Company (File No. BPH-830512CP) ARE DENIED; and,

77. IT IS FURTHER ORDERED, That the application of South Jersey Radio, Inc. (File No. BPH-830511AK) is RANKED FIRST in the captioned proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] Because of the Commission's directive to review the issues with respect to the competing applicants in the remaining RKO proceedings "with highest priority," our consideration of pending exceptions in other proceedings may be held in abeyance for approximately ninety days.

[2] On August 19, 1985, RKO filed comments in support of South Jersey's Motion to Enlarge Issues Against Adwave. It there attached copies of pertinent portions of Gardner's deposition testimony which first revealed his considerations of "divestiture" (Deposition transcript, pp. 40-41):

> [RKO Counsel]: As I understand it, you have represented that if you are successful in obtaining the license in Fort Lauderdale, you will sell all of your stock in Raystay. Do I understand that that means you would give up your interest in the cable operations?
>
> [Gardner]: That is correct.
>
> [Adwave Counsel]: He has not said he would sell it. He said he may divest. Selling and divesting are not the same.
>
> [RKO Counsel]: Are you saying that the existing cable operations that you have now, you would have nothing further to do with them?
>
> [Gardner]: This is correct.
>
> [RKO Counsel]: When you say you will divest yourself of the stock, have you thought that through as far as what that would mean, what you intend to do?
>
> [Gardner]: I discussed it with my estate attorney and he has proposed a method of how to do it.
>
> [RKO Counsel]: Are you going to sell it to your family?
>
> [Gardner]: As I understanding, it, and I am certainly not very qualified, there is a trust arrangement that would be set for the benefit of that family.
>
> [RKO Counsel]: Would you be a trustee?
>
> [Gardner]: I don't know that that has been discussed.

It is notable that at the time of Gardner's deposition on April 29, 1985 (more than a year subsequent to the "B cut-off" date of March 29, 1984) Adwave's comparative posture in the proceeding had been altered dramatically. Three of the eight competing applicants had already dismissed their applications, thus leaving Adwave with competition from only five applicants. Of those five remaining applicants (South Jersey, Cozzin, Laudersea, First City Communications, Inc. (FCCI), and Florida Southern Broadcasting (FSB)), three (South Jersey, Cozzin and FCCI), had revealed that they intended to seek no integration credit, and FSB's counsel had withdrawn its representation. Additionally, Laudersea was facing petitions filed by RKO and Adwave that sought basic qualifying issues against Laudersea. Thus, it would not be unreasonable to posit that Adwave's divestiture

waffling had some foundation in fact. Perhaps Gardner realized that he would not have go give up his principal family-owned Raystay interests; he could retain the pastry and devour it, too.

[3] Adwave does correctly observe, however, that no disqualifying issue was involved in *Tequesta* while the instant case does involve a specific disqualifying issue added by the ALJ.

[4] It must also be noted that Reardon did not know whether WAXY had auxiliary power capability, and at the time she filed the amendment to her application on March 29, 1984, to stipulate that auxiliary power would be provided, she did not know what specific equipment would be required. (Adwave Ex. 8 at 17). She testified that she had an "estimate" of the cost involved but could not state the source of the estimate; she simply believed that it was "not an excessive sum of money." She merely stated in the March 29, 1984 amendment that she was financially qualified to provide this additional service. Also, on January 22, 1985, Reardon further amended her application to enlarge her proposed full-time staff and again certified her

§ *73. 3518* ; *Inconsistent or conflicting applications* : While an application is pending and undecided, no subsequent inconsistent or conflicting applications may be filed by or on behalf of or for the benefit of the same applicant, successor or assignee.

§ *73. 3520* ; *Multiple Applications* : Where there is one application for new or additional facilities pending, no other application for new or additional facilities for a station of the same class to serve the same community may be filed by the same applicant, or successor or assignee, or on behalf of, or for the benefit of the original parties in interest. Multiple applications may not be filed simultaneously.

[7] Henry David Thoreau, *Journal* (1854).

[8] Even assuming, *arguendo*, that the "powers of attorney" were valid, Zingale violated 47 CFR §73.3513(b) because the individuals who purportedly granted the "powers of attorney"

ATTACHMENT 4

RKO General, Inc. (WAXY-FM), 5 FCC Rcd 642

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RKO GENERAL, INC. (WAXY-FM) Fort Lauderdale, Florida	**MM DOCKET NO. 84-1112** File No. BRH-781002WR
For Renewal of License	
ADWAVE COMPANY Fort Lauderdale, Florida	**MM DOCKET NO. 84-1113** File No. BPH-830510AL
SOUTH JERSEY RADIO, INC. Fort Lauderdale, Florida	**MM DOCKET NO. 84-1114** File No. BPH-830511AK
COZZIN COMMUNICATIONS COMPANY Fort Lauderdale, Florida	**MM DOCKET NO. 84-1116** File No. BPH-830512AW
Rosemarie A. Reardon d/b/a LAUDERSEA BROADCASTING COMPANY Fort Lauderdale, Florida	**MM DOCKET NO. 84-1118** File No. BPH-830512CP
For Construction Permit for a new FM Station	
SOUTH JERSEY RADIO, INC. Assignor	
and	File No. BALH-890814ED
GRADH-105, INC., as owned by ACKERLEY RADIO OF FLORIDA, INC. Assignee	
For Consent to Assignment of License for WAXY-FM	
and Related Application	File No. BLH-890814KI

MEMORANDUM OPINION AND ORDER

Adopted: January 11, 1990; Released: February 2, 1990

By the Commission:

1. Before the Commission are: (1) Joint Petition for Approval of Settlement Agreement and Related Relief filed August 11, 1989 by RKO General, Inc., Adwave Company, South Jersey Radio, Inc., COZZIN Communications Corporation, Rosemarie A. Reardon d/b/a Laudersea Broadcasting Company, and Ackerley Radio of Florida, Inc.; (2) statements filed September 13, 1989 by Adwave and September 21, 1989 by Laudersea; (3) Comments filed October 11, 1989 and November 16, 1989 by the Mass Media Bureau; and (4) a reply filed October 23, 1989 by Adwave.

I. SETTLEMENT AGREEMENT

2. In their Joint Petition the parties propose to settle this comparative renewal proceeding. The main features of the proposed settlement are: (1) RKO's renewal application for station WAXY-FM would be dismissed; (2) the mutually exclusive applications of Adwave, COZZIN, and Laudersea would be dismissed; (3) South Jersey's mutually exclusive application for WAXY-FM would be granted; (4) South Jersey would assign the license for WAXY-FM to GRADH-105, Inc. (GRADH-105, Inc., is currently a subsidiary of RKO; it will be acquired by Ackerley as part of this transaction); (5) Ackerley would acquire the physical and other assets of WAXY-FM by acquiring GRADH-105, Inc. Under the agreement Ackerley would pay RKO $12,600,000 and would pay $8,400,000 to the other applicants and their principals.[1]

3. The parties contend that their settlement would serve the public interest by avoiding further burdensome litigation in this case and by helping to resolve the protracted and complex set of interrelated proceedings originally involving 14 RKO-owned stations, including WAXY-FM. RKO's basic and comparative qualifications have been at issue in this series of proceedings for more than 24 years.[2] The parties also contend that approval of the agreement will put WAXY-FM into the hands of an unarguably qualified licensee that would not suffer the same uncertainties as to its future as RKO does. The parties have submitted affidavits stating that they filed their applications in good faith and not for the purpose of reaching or carrying out a settlement agreement.

4. In connection with the proposed settlement, the parties seek a Commission determination regarding the character qualifications of (1) George F. Gardner, the principal of Adwave, and (2) Rosemarie A. Reardon, the principal of Laudersea. The parties ask for a ruling that misconduct allegedly committed by Gardner and Reardon in this proceeding will not bar them from acquiring other stations. The obligations of Adwave and Laudersea under the settlement agreement are conditioned on a favorable finding on this question. *Settlement Agreement* ¶¶ 5.3, 5.4.

5. Dismissal of the relevant applications would, of course, moot the question of whether the alleged misconduct by Gardner and Reardon adversely affected the qualifications of Adwave and Laudersea to be the licensee of WAXY-FM. However, the allegations against Gardner and Reardon could be revisited in connection with any

proposal by these individuals to acquire a new station. *See Allegan County Broadcasters, Inc.*, 83 FCC 2d 371, 373-74 ¶ 6 (1980).

6. Under some circumstances, at the time a proceeding is designated for hearing, the Commission makes a determination as to whether the allegations raised against an applicant affect that applicant's ability to retain or acquire other stations. *See Character Qualifications*, 102 FCC 2d 1179, 1220-25 ¶¶ 83-95 (1986), recon. denied, 1 FCC Rcd 421 (1986) (discussing the policy, originally enunciated in *Grayson Enterprises, Inc.*, 79 FCC 2d 936 (1980) and modified by *Transferability of Broadcast Licenses*, 53 RR 2d 126 (1983)). The parties ask that a *Grayson* determination be made here.

II. *GRAYSON* DETERMINATION

7. In a decision in this proceeding, the Review Board held that Adwave and Laudersea lacked the basic qualifications to be Commission licensees. *RKO General, Inc. (WAXY - FM)*, 4 FCC Rcd 4679 (Rev. Bd. 1989). The Board affirmed a finding to that effect made in the partial initial decision by Administrative Law Judge Joseph Stirmer. *RKO General, Inc. (WAXY - FM)*, 2 FCC Rcd 3348 (I.D. 1987). George F. Gardner is the 100 percent stockholder of Adwave, and Rosemarie A. Reardon is the sole proprietor of Laudersea.

8. The Board found that Gardner lacked candor before the Commission in connection with his categorical pledge that he and his wife would "divest themselves of all of the stock they own" in several cable systems. By means of this pledge, Gardner intended that these interests should not be attributed to Adwave in the comparative analysis of the applicants. According to the Board, Gardner had no intention of divesting himself of these stock interests. Rather, it was revealed that he intended to place the stock in a voting trust that retained for him almost all of the benefits of stock ownership, including the ability to participate in the management of the cable systems. 4 FCC Rcd at 4683 ¶¶ 22-24.

9. The Board held that the trust arrangement was an ineffective and disingenuous attempt to obtain a comparative advantage. Additionally, the Board found that Gardner, an experienced businessman, knew that the trust arrangment could not fairly be described as a "divestiture" of the stock. *Id.* at 4684 ¶ 29.

10. The Board found that Reardon had falsely certified that Laudersea was financially qualified to be a licensee. Laudersea did not have net liquid assets on hand or available from committed sources to meet its initial costs of construction and operation. *Id.* at 4688 ¶ 43. Although Reardon discussed financing generally with a local banker, the banker made no commitment -- oral or written -- to Laudersea. *Id.* at 4685-86 ¶¶ 36-37. The Board found that Reardon had no reasonable basis for certifying that Laudersea was financially qualified or for representing that Laudersea had a bank commitment. *Id.* at 4688 ¶ 44. In the Board's view, Reardon had been disingenuous and recklessly disregarded the truth in so doing. *Id.* at 4689 ¶ 48.

11. Despite these findings of misconduct, both Adwave and Laudersea assert that their principals can be found qualified to acquire additional stations. Both claim that the alleged misconduct represents isolated misjudgment that will not recur at other stations. They also contend that their principals will be deterred from further misconduct by the painful litigation in this proceeding.

12. More specifically, Adwave emphasizes that the alleged misconduct did not involve a continuing effort to mischaracterize Gardner's intentions. Adwave maintains that after questions were raised about Gardner's divestiture pledge at a deposition, Gardner fully disclosed his plans. Adwave also asserts that Gardner has had an unblemished past broadcast record in connection with his ownership of WQVE-FM in Mechanicsburg, Pennsylvania (1978-82), WEEO in Waynesboro, Pennsylvania (1971-80 and 1983-84), and WTTO in Toledo, Ohio (1973-76).

13. Similarly, Laudersea attributes the alleged misconduct to Reardon's inexperience in broadcasting and the inadequate assistance of her communications counsel. According to Laudersea, Reardon's good faith is demonstrated by the fact that, after questions were raised about her conduct, she acted expeditiously to cure Laudersea's financial deficiencies and retained new communications counsel.

14. Accordingly, Adwave and Laudersea argue that there is no substantial likelihood that the allegations against Gardner and Reardon would bear upon the operation of other stations. *See Grayson*, 79 FCC 2d 940 ¶ 10. As an additional matter, Adwave and Laudersea contend that granting their requested relief will serve the public interest by helping to resolve the RKO proceedings.

15. The Mass Media Bureau opposes the requested relief. The Bureau argues that Gardner and Reardon were found to have committed serious misconduct that impeaches their truthfulness and reliablity vis-a-vis future applications. Moreover, the Bureau asserts that a failure to take this misconduct in account would undermine the deterrent aspects of the licensing process. Procedurally, the Bureau questions whether the rationale for permitting an existing licensee in hearing to transfer co-owned stations, not involved in misconduct, should be extended to permit a new applicant of doubtful character to acquire other stations. Hence, the Bureau contends that there is no justification here for ruling that Gardner and Reardon may freely acquire additional stations. In the Bureau's view, the fact that this is one of the RKO proceedings does not warrant special treatment.

16. In its reply to the Bureau, Adwave concedes that the Commission does not ordinarily make a *Grayson* determination in proceedings involving new applicants. Adwave asserts that such a determination is warranted here because (1) there is no need to postpone a determination of Gardner's qualifications, given the availability of a full record here, and (2) a favorable determination would facilitate the resolution of the *RKO* proceedings. Adwave asserts that a new applicant found unqualified in one proceeding is not automatically disqualified from receiving a different authorization. In view of the unique nature of this proceeding, Adwave contends that a favorable *Grayson* determination would not undermine considerations of deterrence.

17. Initially, we agree with the parties that the public interest benefits of entertaining settlements in the RKO proceedings warrant undertaking a *Grayson* determination here, although such a determination would not routinely be made in the case of new applicants. As we have noted, settlements in the RKO proceedings offer the possibility of terminating one of the most protracted and burdensome proceedings in the Commission's history and

putting RKO's stations into the hands of unquestionably qualified licensees able to devote their full resources to broadcasting. We have recognized that undertaking a *Grayson* determination in the case of a new applicant is somewhat more difficult than it is in the case of an existing licensee. *Character Qualifications*, 102 FCC 2d at 1225 ¶ 95. In view, however, of the unusual public interest benefits of the settlement process in the RKO proceedings, we will undertake this more difficult task here.

18. Turning to the merits, we will grant the relief requested by the parties – but only conditionally. We cannot find on the record before us that Gardner and Reardon are qualified, without reservation, to acquire additional stations. As the Bureau points out, Gardner and Reardon allegedly committed serious misconduct that we cannot ignore. [3] The Commission believes that truthfulness is a key element of character necessary to operate a broadcast station in the public interest. *Character Qualifications*, 102 FCC 2d at 1210 ¶ 60.[4] Misconduct involving such a deficiency does not, however, necessarily bar an applicant from further broadcast ownership. In some cases, we have found that an isolated transgression does not disqualify an applicant from further broadcast ownership. *See United Broadcasting, Inc.*, 100 FCC 2d 1574, 1583-86 ¶¶ 20-25 (1985); *WIOO, Inc.*, 95 FCC 2d 974, 983-84 ¶ 23 (1983); *Faulkner Radio, Inc.*, 88 FCC 2d 612, 615-18 ¶¶ 11-17 (1981).[5] These cases, however, involved factors not present here – for example, the deterrent impact of previously having an application denied, as a basis for concluding that a recurrence of misconduct is unlikely.

19. Thus, these cases do not directly support a finding that Gardner and Reardon may be found unconditionally qualified to acquire additional stations. Nonetheless, other factors suggest that the alleged misconduct should not necessarily bar Gardner or Reardon from acquiring additional stations. Several years will have elapsed since the alleged misconduct assertedly occurred.[6] The applicants may be able to show that their conduct and compliance with the law during the intervening time between the alleged misconduct and the filing of new applications has the applicant intends to undertake meaningful measures to prevent the future occurrence of FCC-related misconduct. *See, e.g., Central Broadcasting Co.*, 11 FCC 259, 280-81 ¶¶ 6-8 (1946); *Catamount Broadcasters, Inc.*, 70 FCC 2d 913, 916-18 ¶¶ 7-11 (Rev. Bd. 1976). Of course, there should be no occurrence of misconduct in connection with the new application. The applicants' submissions will be subject to scrutiny by the Mass Media Bureau, which may make further inquiries if deemed necessary. Moreover, any persons with adverse information about the applicants may submit this to the Commission.

22. In our view, these measures will serve to impress on Gardner and Reardon, as well as applicants generally, the seriousness with which we view relevant misconduct. We emphasize that Gardner and Reardon do not walk away from the alleged misconduct "scot-free" but remain subject to heightened scrutiny necessitating an affirmative good character showing (which is not ordinarily required of applicants). A further point should also be clearly understood. As a procedural matter, we have found that the public interest benefits of settlements in the RKO proceedings warrant undertaking a *Grayson* determination in a situation where we would not routinely undertake one. Substantively, however, we have not reduced our concern for licensee character merely because this is an RKO proceeding.

III. PUBLIC INTEREST DETERMINATION

23. We now turn to the more general aspects of the settlement agreement. We have fully considered and approved a settlement agreement similar to the instant one in the KHJ-TV, Los Angeles, California proceeding (Docket Nos. 16679-80). *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988), appeal docketed sub nom. *New South Media Corp. v. FCC*, No. 88-1683 (D.C. Cir. Sept. 19, 1988).[8] We there concluded that strong public interest considerations favor settling what has become one of the most protracted and burdensome proceedings in the Commission's history. Although the circumstances in this case

incorporate herein by reference, we hold that approving the agreement before us would serve the public interest. Similarly, we find that the agreement complies with 47 U.S.C. § 311(d) and 47 C.F.R. § 73.3525.

25. We note, moreover, that in pleadings filed October 11 and November 16, 1989, the Bureau states that it has no objections to approval of the settlement agreement (other than its objections under the *Grayson* question). The Bureau also states that it has reviewed the assignment application and finds that the proposed assignee is qualified. In this regard, the Bureau recommends that we grant Ackerley a waiver of the Commission's attribution rules. *See* 47 C.F.R. § 73.3555 Note 2(h).

26. The need for a waiver arises from the following facts. John A. Canning, a director of Ackerley's parent corporation, is the president of First Financial Investment Corporation. First Financial and an affiliated company own a 21 percent nonvoting stock interest in the licensee of station WLTV(TV) in Miami, Florida (part of the same market as Fort Lauderdale). Canning's dual interests do not violate the Commission's rules, but they might raise a question under the Commission's cross-interest policy. This is so because Ackerley's interest in WAXY-FM is attributable to Canning under the Commission's rules and First Financial's interest in WLTV(TV), although not attributable under the rules (because a nonvoting stock interest is involved), is significant for cross-interest purposes. *See Reexamination of the Commission's Cross - Interest Policy*, 2 FCC Rcd 3699, 3700 ¶ 12 (1987), 4 FCC Rcd 2035, 2036-37 ¶¶ 12-13 (1989).

27. Consistent with the criteria set forth in 47 C.F.R. § 73.3555 Note 2(h), Ackerley has submitted documentation indicating that Canning's responsibilities as a director of Ackerley's parent are wholly unrelated to broadcasting. Thus, as provided by the rule, we will waive the attribution of Ackerley's interest in WAXY-FM to Canning that would otherwise result from his status as a director of Ackerley's parent. The waiver of attribution breaks the problematic nexus between WAXY-FM and WLTV(TV) and thereby eliminates the possibility of a cross-interest problem.

IV. ORDERS

28. ACCORDINGLY, IT IS ORDERED, That the Joint Petition for Approval of Settlement Agreement and Re-

31. IT IS FURTHER ORDERED, That the partial initial decision and the Review Board decision dealing with the qualifications of the various applicants for a construction permit (*RKO General, Inc. (WAXY - FM)*, 2 FCC 3348 (I.D. 1987), aff'd, 4 FCC Rcd 4679 (Rev. Bd. 1987) ARE VACATED as moot;[11] that the allegations raised in this proceeding concerning George F. Gardner and Rosemarie A. Reardon ARE DEEMED not to bear on their ability to acquire additional broadcast stations, provided that they submit, in conjunction with any application for a new station, an adequate showing of good character, as set forth in paragraph 21 above; that the applications for review of the Board's decision filed July 6 and 7, 1989 concerning the comparative qualifications of the various applicants ARE DISMISSED as moot;[12] and that the Review Board IS DIRECTED to dismiss as moot the petition for reconsideration dealing with the qualifications of Adwave.

32. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The payments to the other applicants would be distributed as follows:

Adwave	$2,000,000
South Jersey (and a principal)	$2,900,000
COZZIN (and a principal)	$1,500,000
Laudersea	$2,000,000

[2] A detailed history of these proceedings is set forth in *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988).

[3] As the parties point out, in making a *Grayson* determination, we do not undertake to review the merits of the decision below. (Indeed, ordinarily such a determination would be made at the time a hearing on alleged misconduct was designated, rather

[5] We find these cases more apposite than *Straus Communications, Inc.*, 2 FCC Rcd 7469 (1987), cited by the parties. In *Straus*, the Commission held that allegations of misconduct, including false financial certification, did not bar a licensee from transfering a station uninvolved in the alleged misconduct. That decision turned to a significant extent on procedural and public interest factors, not relevant here, specifically relating to the transfer of a licensee's existing station. The Commission noted that no limitation had been put on the transferability of the station in question and that the public interest favored the immediate transfer of the station to a qualified applicant. Because the applicants here seek the right to acquire stations rather than divest themselves of stations, the specific rationale of *Straus* cannot be applied to the facts before us. We therefore consider it more appropriate to examine precedent relating more generally to the character qualifications of multiple owners.

[6] For example, Gardner filed the amendment containing his original divestiture pledge on March 27, 1984 and repeated it in

ATTACHMENT 5

Declaration of George F. Gardner Filed March 14, 1990

LAW OFFICES

COHEN AND BERFIELD, P.C.

BOARD OF TRADE BUILDING

1129 20TH STREET, N.W.

WASHINGTON, D.C. 20036

(202) 466-8565

TELECOPIER
(202) 785-0934

LEWIS I. COHEN
MORTON L. BERFIELD
ROY W. BOYCE
JOHN J. SCHAUBLE*

*VIRGINIA BAR ONLY

March 14, 1990

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: BPTTL-890309NZ Lebanon, PA

Dear Ms. Searcy:

On behalf of Raystay Company there is attached hereto

DECLARATION

George F. Gardner hereby declares under penalty of perjury that the following is true and correct to the best of his personal knowledge:

I am the sole stockholder, director and an officer of Adwave Company, which was an applicant for a new FM station at Fort Lauderdale, Florida (File No. BPH-830510AL; MM Docket No. 84-1113). The proceeding involving Adwave was resolved by settlement approved by the Commission in RKO General, Inc. (WAXY-FM), FCC 90-18, released February 2, 1990 (RKO). As reflected at para. 7 to 22 thereof, the effect of the settlement was to leave an unresolved character issue concerning Adwave. RKO also therein adopted procedures governing the consideration of the impact of that issue in connection with future broadcast applications in which I am involved.

I am also the controlling stockholder, an officer and a director of Raystay Company (Raystay). Raystay is the licensee of LPTV station W40AF, Dillsburg, Pa. and the tentative selectee for five LPTV stations that are still pending:

BPTTL-890309NX	Red Lion, PA
BPTTL-890309NY	Lancaster, PA
BPTTL-890309NZ	Lebanon, PA
BPTTL-890309PA	Lancaster, PA
BPTTL-890309TD	Lebanon, PA

See Report No. GL89-3, released June 16, 1989. This Declaration is designed to meet the first and third tests set forth in para. 21 of RKO in order to justify the grant of the five LPTV applications noted above. The second test (reputation in the community) will be met by Declarations of persons with knowledge of my reputation in the Carlisle, Pennsylvania community where I principally reside and conduct business.

Since the filing of the Adwave application in 1983, no allegations have been made of any significant broadcast-related misconduct by myself or any company in which I am involved, and I am aware of no such misconduct. As noted at para. 20 of RKO, I had a previously unblemished record of broadcast ownership, which is detailed at para. 42 of RKO General, Inc. (WAXY), 2 FCC Rcd 3348 (ID 1987).

The issue against Adwave involved a finding that I improperly proposed to divest other media interests in which I was involved. While I never intended to deceive the Commission, I now realize the importance of being absolutely candid in applications and statements made by me to the Commission, and have resolved to carefully review any such applications and statements to ensure that they fully and accurately disclose any pertinent facts. I would note in this respect that, prior to RKO, Exhibit 3 to each of the pending LPTV applications made full disclosure of the adverse Initial Decision against

Adwave, and the applications were amended on July 6, 1989 to report the Review Board's affirmance of the Initial Decision. These actions I believe reflect my desire to ensure that the LPTV staff be fully informed as to these pertinent facts.

I would accordingly urge that the circumstances warrant a conclusion that Raystay is qualified to be the licensee of the five LPTV stations at issue.

George F. Gardner

George F. Gardner

Date: March 11, 1990